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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAURA MARTINEZ,

Plaintiff - Appellant,

v.

ERIC K. SHINSEKI, Secretary
Department of Veteran Affairs,

Defendant - Appellee.

No. 12-15477

D.C. No. 2:09-cv-01354-RLH-RJJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Senior District Judge, Presiding

Submitted December 6, 2013**
San Francisco, California

Before: TROTT and MURGUIA, Circuit Judges, and EZRA, District Judge.***

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable David A. Ezra, District Judge for the U.S. District Court for the Western District of Texas, sitting by designation.

The record conclusively demonstrates that Martinez was terminated not because of her disability, but because she refused to respond to multiple appropriate requests by the Veterans Administration's Occupational Health Unit to register for e-QIP. Moreover, as the EEOC said, "[W]e note that petitioner does not dispute that she did not comply with the agency's request for additional information" regarding her request to be relieved of her e-QIP duties. Even when confronted with a Notice of Proposed Removal, she did not respond as requested.

Accordingly, because these facts were undisputed, summary judgment was proper with respect to her claim of unlawful discrimination. See Humphrey v. Mem'l Hosps. Ass'n, 239 F.3d 1128, 1133 (9th Cir. 2001) ("[T]he plaintiff must establish that [s]he is . . . 'an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.'" (quoting 42 U.S.C. § 12111(8)).

Martinez's assertions of retaliation are equally devoid of any factual support.

AFFIRMED.